

ANALYSIS OF ORIGINAL BILL

Franchise Tax Board

Author: Bowen Analyst: Kristina E. North Bill Number: SB 168
Related Bills: See Legislative History Telephone: 845-6978 Introduced Date: February 5, 2001
Attorney: Patrick Kusiak Sponsor: _____

SUBJECT: Personal Information Confidentiality/Identity Theft

SUMMARY

This bill would grant consumers a right to authorize the verification and the issuance of their consumer credit report information. The department is exempted for inquiries related to the investigation or collection of delinquent taxes. This bill also would reduce the use of social security numbers (SSNs) as personal identifying numbers.

These provisions are discussed separately.

This bill also would make changes to the Civil Code with regard to consumer credit reporting agencies. These changes do not affect the department and are not discussed in this analysis.

PURPOSE OF THE BILL

According to the author's office, this bill would: 1) allow consumers to protect themselves from identity theft by giving them a measure of control over the verification and issuance of consumer credit report information; and 2) make SSNs more confidential.

EFFECTIVE/OPERATIVE DATE

This bill would be effective January 1, 2002, and become operative on July 1, 2002, and would apply to the department's use of SSNs on and after that date.

POSITION

Pending.

Summary of Suggested Amendments

As requested by the author, the department is providing an amendment to expand the FTB exclusion from the consumer credit report section to include other statutory responsibilities, including non-tax debt collection and processing.

Also, as requested by the author, the department is providing an exclusion for FTB from the use of SSN requirements.

Board Position:

<input type="checkbox"/> S	<input type="checkbox"/> NA	<input type="checkbox"/> NP
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<input type="checkbox"/> N	<input type="checkbox"/> OUA	<input checked="" type="checkbox"/> PENDING

Department Director

Date

Gerald H. Goldberg

03/26/01

ANALYSIS

STATE AND FEDERAL LAW

Current federal and state tax laws require that an individual's SSN be used as the identifying number for that individual with regard to income taxes. **Current state tax law** provides that information collected on income tax returns is considered confidential and, unless specifically available for other uses, must be used only to administer the income tax laws. The Franchise Tax Board (FTB) may disclose taxpayer information only in limited circumstances and only to specific agencies as authorized by law. Unwarranted or unauthorized disclosure of income tax return information is a misdemeanor offense.

Under the **Information Practices Act of 1977**, **current state law** requires state and local agencies to maintain in their records only that personal information relevant and necessary to its governmental purposes, including disclosing personal information under only specific circumstances and keeping records thereof. "Personal information" is defined as any information that is maintained by an agency that identifies or describes an individual, including, but not limited to, his or her name, SSN, physical description, home address, home telephone number, education, financial matters, and medical or employment history. The definition also includes statements made by, or attributed to, the individual. The Information Practices Act establishes civil remedies for the enforcement of its provisions.

Current state law prohibits any state agency from sending any outgoing United States mail to an individual containing personal information about that individual, including, but not limited to, the individual's SSN, telephone number, driver's license number, or credit card account number, unless the correspondence is sealed and no personal information can be viewed from the outside of that correspondence.

SECURITY ALERTS AND SECURITY FREEZES ON CONSUMER CREDIT REPORT INFORMATION

THIS BILL

Under the California Civil Code, this bill would allow an individual to place a security alert or security freeze on his or her consumer credit report information. "Security alert" is defined as a warning urging any recipient of an individual's credit report information to verify the identity of the individual because the individual's identity may have been used without his or her consent. "Security freeze" is defined as a restriction on the credit reporting agency from releasing any information in an individual's credit report without the individual's prior express authorization.

This bill would specifically exclude from these provisions the use of the consumer credit report by FTB for the purposes of investigating or collecting delinquent taxes.

IMPLEMENTATION CONSIDERATIONS

FTB is statutorily required to collect and process payments and related correspondence for non-tax debt programs including the Child Support Collection Program, Court Ordered Debt Collections, Vehicle Registration Collections, and Industrial Health and Safety Collections.

These non-tax debt programs are not specifically included in the bill's exclusion from these provisions of FTB's use of the consumer credit report. Author's staff has indicated that the intent was to exclude FTB's use of a consumer credit report to fulfill all of its statutory requirements, including non-tax debt programs. Amendment 1 is provided. (Since the bill language currently mandates Internal Revenue Service use of a consumer report, and that mandate is not a California tax concern, the amendment is drafted without removing the current IRS provision. Please see the Policy Consideration discussed below in this analysis.)

TECHNICAL CONSIDERATIONS

Amendment 2 is provided to make certain grammatical corrections.

CONFIDENTIALITY OF SOCIAL SECURITY NUMBERS

THIS BILL

Under the California Civil Code, beginning on or after July 1, 2002, this bill would prohibit a person or entity, or state or local agency, from:

- publicly posting or displaying an individual's SSN;
- printing an individual's SSN on any card required to access products or services;
- requiring an individual to transmit his or her SSN over the Internet unless the connection is secure or the SSN is encrypted;
- requiring an individual to use his or her SSN to access an Internet website unless a password or unique personal identification number is also required to access the website; and
- printing an individual's SSN on any materials that are mailed to the individual, unless state or federal law requires the SSN to be on the document to be mailed. Notwithstanding this provision, applications and forms sent by mail may include SSNs.

This bill would allow a person or entity, or state or local agency that has used an individual's SSN before July 1, 2002, to continue using the SSN as prohibited above after July 1, 2002, if the following conditions are met:

- the use of the SSN is continuous (If the use is stopped for any reason, the prohibitions will apply);
- commencing in 2003, the individual is provided with an annual disclosure informing the individual of his or her right to request their SSN not be used in a manner prohibited as described above;
- a written request by an individual that use of his or her SSN in a manner prohibited by this bill, as described above, will cease within 30 days of the receipt of the request at no charge to the individual; and
- A person or entity, or state or local agency must not deny services to an individual because the individual makes a written request to said service agency to cease using his or her SSN as prohibited by this bill.

A state or local agency would be allowed to use an SSN for internal verification and administrative purposes providing its use does not cause the release of the SSN to persons not designated by the public agency to perform associated functions authorized by law.

IMPLEMENTATION CONSIDERATIONS

The department has identified the following implementation concerns. Department staff is available to work with the author's office to resolve these and other concerns that may be identified.

- Definitions are needed for "publicly post or display," "continuous," "secure," "internal verification," and "administrative purposes."
- Internal conflict exists within this bill's language. It is unclear how a person or entity or state or local agency may *continue* using an SSN *only* if it meets all four conditions specified in the bill when two of the conditions would result in the cessation of use of the SSN (i.e., one of the conditions is to process a written request from an individual to cease using his or her SSN within 30 days. Another is the prohibition from denying services to an individual who has requested cessation of use of his or her SSN.). Additionally, it is unclear how a service entity or agency would be able to meet the annual disclosure condition since the annual disclosure does not commence until 2003, but the entity or agency must satisfy the condition to continue use after July 1, 2002.
- The author's office indicated that it was not its intent to require FTB to cease using SSNs as identifying numbers and has requested that the department provide language to specify that this section not apply to the FTB in fulfilling its statutory requirements. Amendment 3 is provided. Without this amendment, FTB could be precluded from using SSN on materials mailed to a taxpayer, including but not limited to refund checks, correspondence regarding the taxpayer's account, and related documents. Although state and federal law require the SSN to be used as the identifying number for individual taxpayers, it does not specifically require the use of the SSN on every document that may be mailed to a taxpayer. FTB also uses SSNs when filing tax liens, wage assignments and bank levies against delinquent taxpayers. SSNs are used to assure proper identification by the county recorders. These documents, including SSNs, become public documents. Similarly, wage assignments and bank levies include the taxpayer's SSN for identification and become known to private third parties, usually banks and employers.

LEGISLATIVE HISTORY

SB 129 (Peace, Stats. 2000, Ch. 984) requires each state agency to enact and maintain a permanent privacy policy in adherence with the Information Practices Act of 1977.

SB 1365 (Murray, 1999/2000) would have created the "Identify Theft Victim's Protection Act," which would have made it a felony or misdemeanor to intentionally disclose personal information about a California resident to a third party for direct marketing purposes. This bill failed passage from the Senate Committee on Public Safety.

SB 1767 (Bowen, 1999/2000) had nearly identical language to the current bill and would have given a consumer the right to place a security alert or prohibit a consumer credit reporting agency from releasing any information in the consumer's credit report without express authorization of that consumer. This bill would have specified that this provision would not impact those persons or entities with whom the consumer already has an account. This bill failed passage from the Assembly Banking and Finance Committee.

SB 558 (Peace, Stats. 1997, Ch. 685) prohibits any state agency from sending any outgoing United States mail to an individual containing personal information about that individual, including, but not limited to, the individual's SSN, telephone number, driver's license number, or credit card account number, unless the correspondence is sealed and no personal information can be viewed from the outside of that correspondence.

PROGRAM BACKGROUND

Under current department practice, personal information is collected by the department from various sources, including from the taxpayer and from agencies required to report financial information. This information is used for compliance development, audit, and collection. FTB does not use personal information or provide that information to third parties for any marketing purposes. As required by statute, all information received from the taxpayer is confidential and is shared with federal or state agencies only for statutorily specified purposes.

FTB has stringent departmental policies and procedures regarding privacy and disclosure. All employees receive training about ensuring the confidentiality of taxpayer information and are given updated procedures on a regular basis. Any violation of these policies and procedures is subject to disciplinary action and/or is punishable by law.

OTHER STATES' INFORMATION

Most states have privacy laws that are similar to California's privacy laws and the federal Privacy Act prohibiting various state and local agencies from disclosing personal identifying information, such as an SSN, in an unauthorized manner. Some states have additional laws relating to identity theft; however, they do not further restrict disclosure and use of personal identifying information by revenue collecting agencies.

Illinois, Massachusetts, and Minnesota also have varying identity theft laws which all make it illegal to use any personal identifying information of another person to fraudulently obtain credit, money, goods, services, or property in the name of the other person.

FISCAL IMPACT

If the implementation concerns were resolved, this bill would not significantly impact the department's costs.

ECONOMIC IMPACT

This bill would not impact the state's income tax revenues.

POLICY CONCERN

By specifying that the Internal Revenue Service may use a consumer credit report to investigate or collect delinquent taxes, this bill attempts to mandate federal use. This language appears unnecessary since California would not have the constitutional authority to prohibit a federal agency from using a consumer report in any way authorized by federal law.

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FRANCHISE TAX BOARD'S
PROPOSED AMENDMENTS TO SB 168
As Introduced February 5, 2001

AMENDMENT 1

Amend page 5, lines 4 through 9, as follows:

- (4) The Franchise Tax Board ~~or the Internal Revenue Service or their~~ its agents or assigns, acting to investigate or collect delinquent taxes or to fulfill any other of its statutory responsibilities.
- (5) The Internal Revenue Service, or its agents or assigns, acting to investigate or collect delinquent taxes.
- (6) The use of credit information for the purposes of prescreening as provided for by the federal Fair Credit Reporting Act.

AMENDMENT 2

Amend page 9, lines 5 and 6, as follows:

A security freeze does not apply to a person or entity, or its affiliates, or collection agencies acting on behalf of the person or

AMENDMENT 3

On page 10, on line 30 after "(e)," insert:

The provisions of this section shall not apply to the use of the Social Security number by the Franchise Tax Board or its agents or assigns.

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